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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/788,431

02/27/2004

Scott A. Leman

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04/13/2007

CATERPILLAR/FINNEGAN, HENDERSON, L.L.P.

901 New York Avenue, NW

WASHINGTON, DC 20001-4413

EXAMINER

RIDDLE, KYLE M

ART UNIT

PAPER NUMBER

3748

MAIL DATE

DELIVERY MODE

04/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/788,431

Applicant(s)

LEMAN, SCOTT A.

Examiner

Kyle M. Riddle

Art Unit

3748

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-14, 17-28 and 35-42.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Kyle M. Riddle
Kyle M. Riddle
Examiner
Art Unit 3748

Thomas Denion
THOMAS DENION
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Continuation of 11. does NOT place the application in condition for allowance because: (1) Applicant has amended some of the independent claims to include limitations contained in other claims, specifically "the source of pressurized fluid being insufficient to move the valve element toward the open position" and "moving to the second position for a predetermined period of time". Applicant argues on page 12 that Rammer et al. does not teach the source of pressurized fluid being insufficient to move the valve element to the open position, and further argues that the additional reference relied on by the examiner, Israel et al., also does not teach this limitation. In the arguments, applicant cites a pressure greater than the motion of the mechanical transferring means (Israel et al., col 12 line 65 - col 13, line 3). Although Israel et al. is capable of pressurized fluid greater than the mechanical means to open the valve, this particular function cited demonstrates a capability of the Israel et al. invention during a compression release event. The teaching cited by the examiner (column 12, lines 12-16) shows another capability of the Israel et al. invention where the pressurized fluid means is less than the mechanical transferring means, specifically for a main exhaust valve event. It is the examiner's position that Israel et al. has the capability to perform not only the limitations cited by the applicant, but other functions as well, and therefore, still reads on the claims as written and interpreted in their broadest sense. (2) Similarly, applicant argues on page 13 that the Rammer et al. reference does not hold the valve in a second position for a predetermined period of time, and cites col 5, lines 18-24 for justification. These lines do indeed indicate that pressure is the determining factor for that specific configuration rather than time. However, as the examiner has pointed out previously, Rammer et al. specifically mentions maintaining the valve in a second position "for a period of time" (Abstract, column 10, lines 29-33). The omission of "predetermined", in the opinion of the examiner, still would not make the claims cited by the applicant read over Rammer et al. Therefore, the rejections cited in the Final Rejection are maintained.